

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:09cv344
(3:05cr277)

AVERY SHANDEL JAMES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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O R D E R

THIS MATTER is before this Court on the Petitioner's File Petitioner's motion for discovery and an evidentiary hearing. (Doc. No. 10).

In his Motion to Vacate, Petitioner alleged that Court records do not show proof that the necessary number of grand jurors approved the indictment or that the indictment was returned in open court. (Doc. No. 1: Motion at 5). In the instant motion for discovery, Petitioner seeks copies of documents of grand jury proceedings in his case. Significantly, Petitioner does not claim that any irregularities actually occurred in his case which could be proven by such discovery. The Court finds his request to be the type of "fishing expedition" not sanctioned by Rule 6(a) of the Rules Governing Section 2255. Williams v. Bagley, 380 F.3d 932, (6th Cir. 2004).

IT IS, THEREFORE, ORDERED that Petitioner's Motion for discovery and an evidentiary hearing (Doc. No. 10) is DENIED. In the event the Court later determines an

evidentiary hearing is necessary to resolve the defendant's Motion to Vacate, one will be scheduled by separate order.

Signed: January 6, 2010

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

